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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,269	09/16/2002	Olli P. Kallioniemi	4239-62295	8794
36218	7590	02/28/2006	EXAMINER	
KLARQUIST SPARKMAN, LLP 121 S.W. SALMON STREET SUITE #1600 PORTLAND, OR 97204-2988			DEJONG, ERIC S	
			ART UNIT	PAPER NUMBER
			1631	
DATE MAILED: 02/28/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/088,269	KALLIONIEMI ET AL.	
	Examiner	Art Unit	
	Eric S. DeJong	1631	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): see continuation sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-5, 9-45 and 64-68.
Claim(s) withdrawn from consideration: 15-40.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see continuation sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____

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Continuation of item #5. NOTE:

The rejection of claims 1-5, 9-14, and 64-68 under 35 USC §112, first paragraph, for containing new matter is withdrawn in view of amendments made to the instant claims.

The rejection of claims 1-5, 10, 11, 13, 14, and 64 under 102(e) as being anticipated by Garini et al. is withdrawn in view of amendments made to the instant claims.

Continuation of item #11. NOTE:

The rejection of claims 1-5, 9-14, and 64-68 under 35 USC §103(a) as being unpatentable over Garini et al. in view of Cabib et al. is maintained and reiterated from the previous Office action.

Regarding the amendment to claim 1 reciting the limitation of the use of confocal microscopy, Cabib et al. set forth in the Summary of the Invention that preferred embodiments of the microscope for use with the disclosed methods and systems may be selected from the group consisting of a reflection microscope, a transmission microscope, a fluorescence microscope, an upright microscope, an inverted microscope, a dark field microscope, a confocal microscope, a standing wave confocal microscope, and a contrast microscope (see Cabib et al., column 7, lines 53-59 and also page 10, line 19 through page 11, line 2 of the Office action mailed 09/26/2005).

Applicants argue that Cabib et al. does not resolve the deficiency of Garini et al. in that Cabib et al. does not describe the limitation "optical sections of the region of interest at different depths of the biological specimen" nor would one of ordinary skill in the art arrive at the claimed feature by the use of "specific depths of the cell" in the context used by Cabib et al. Applicants further cite Cabib et al. col. 19, lines 28-30 and col. 20, lines 16-18 regarding the use of only two-dimensional spatial images and a third dimension being spectral rather than spatial (see applicants response, page 11, lines 4-20).

In response, it is noted that both Cabib et al. and Garini et al. describe obtaining spectral 3D data structure consisting 2 spatial dimensions and one spectral dimension. These data structures are further discussed in the context of being an improvement over known experimental techniques that rely on acquiring 3D tomographic data of a sample by use of a 3D data structure comprising three spatial dimensions (see for example, Garini et al. col. 16, line 57 through col. 17, line 22 and Cabib et al., col. 20, lines 4-30) and that such 3D spatial data structures are typically obtained by confocal microscopy. Further, the amendments to instant claims 1, 64, and 68 recite obtaining "a plurality of successive images of a region of interest obtained by confocal microscopy, wherein the successive images are optical sections of the region of interest. at different depths of the biological specimen". It is further noted that claimed term "successive images of optical sections" is not restricted to 2-dimensional images. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The instant claims remain open to embodiments as disclosed in Garini et al. and Cabib et al. wherein the "successive images of optical sections" are obtained from a 3D data structure consisting of 2 spatial dimensions and one spectral dimension.

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John S. Brusca 14 February 2006
JOHN S. BRUSCA, PH.D
PRIMARY EXAMINER